

**From:** "Greczmiel, Horst" <(b) (6)>

**Date:** October 10, 2015 at 6:10:30 AM PDT

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Cc: "Rodgers, Kerry" <(b) (6)>, "Patel, Manisha"  
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**Subject: Follow-up on our Oct 9th 3pm eastern call**

Here is the information on the referral process that I promised to provide. Thank you for your participation in the call as well as the subsequent input. I look forward to receiving your additions/revisions to the timeline next week, and will continue reaching out to several of you as we prepare for our next call on October 23.

(b)(5) - deliberative

The regulations can be found [HERE](#) and the specific section on timing and public input is reprinted below:

#### **40 CFR 1504.3 Procedure for referrals and response.**

(a) A Federal agency making the referral to the Council shall:

1. Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.
2. Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.
3. Identify any essential information that is lacking and request that it be made available at the earliest possible time.
4. Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

5. A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.
6. A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

- (i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,
- (ii) Identify any existing environmental requirements or policies which would be violated by the matter,
- (iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,
- (iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,
- (v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and
- (vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

1. Address fully the issues raised in the referral.
2. Be supported by evidence.
3. Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response. (f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

1. Conclude that the process of referral and response has successfully resolved the problem.
2. Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

3. Hold public meetings or hearings to obtain additional views and information.
  4. Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.
  5. Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.
  6. Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).
  7. When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.
- (g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.
- (h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

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**From:** Greczmiel, Horst

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**Subject:** Oct 9th 3pm eastern call: DELIBERATIVE - PRE-Decisional - NOT FOR PUBLIC RELEASE

**Importance:** High

An edited draft timeline is provided for today's call,  
it adds the following to Scenario II:

(b)(5) - deliberative

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**Cc:** Rodgers, Kerry; Patel, Manisha

**Subject:** Today's 3pm eastern call: DELIBERATIVE - PRE-Decisional - NOT FOR PUBLIC RELEASE

**Importance:** High

Good morning, attached is the notional decision timeline for the proposed project. The discussion today will begin (b)(5) - deliberative

As a reminder, the call in information is:

(b) (6)



After the beep enter passcode (b) (6) #

Regards, Horst